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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 733

IRENE MOSES, Claimant,
Petitioner,

ONE 1949 PONTIAC SEDAN,
Motor No. P-8RH10913, Libellee,

vs.

UNITED STATES OF AMERICA, Libellant,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Irene Moses, claimant, petitioner, prays that a Writ of Certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit entered in the above entitled cause on February 21, 1952 reversing, by a divided court, a judgment of the United States District Court for the Northern District of Illinois in favor of the claimant.

OPINIONS BELOW.

The trial court filed an opinion (R. 49-54) which is not reported. The opinion of the United States Circuit Court of Appeals for the Seventh Circuit (R. 75-83) has not been reported.

JURISDICTION.

The judgment of the Circuit Court of Appeals sought to be reversed was entered on February 21, 1952 (R. 75). Petitioner did not file a Petition for Rehearing. The jurisdiction of this Court is invoked under U. S. C. Title 28, Sec. 1254 (1).

QUESTIONS PRESENTED.

1. Whether a vehicle can be forfeited solely upon presumptions where the defendant is an inanimate object incapable of negation of the presumptions.

2. Whether Section 2553, Title 26 U. S. C. (a criminal statute) which provides that the absence of appropriate revenue stamps on narcotics raises a presumption that the narcotics were unlawully purchased is applicable against an inanimate object in a civil forfeiture proceedings.

3. Whether "probable cause" as used in Section 1615, Title 19 U.S.C. can be established by mere guess, surmise, suspicion or conjecture.

4. Whether the finding of fact of the trial court that there is no "probable cause" is clearly erroneous where the culpability of the vehicle is predicated solely upon the testimony of a government agent that:

(a) When he entered the first floor of a residence to be searched the automobile sought to be forfeited was not in a sight,

(b) After the search had been in progress for a period of thirty minutes or more a person entered the premises being searched and narcotics and keys to the automobile were found on his person, and

(c) Shortly thereafter the automobile was seen parked in the street in the vicinity of the premises being searched.

STATUTES INVOLVED.

The statutes involved are:

U.S.C., Title 19, Section 1615.
U.S.C., Title 20, Sections 174.
U.S.C., Title 26, Section 2553 (a).
U.S.C., Title 28, Section 1355.
U.S.C., Title 28, Section 2461.
U.S.C., Title 49, Section 781 (a).

They appear in the appendix, pp. 1a to 3a.

SPECIFICATION OF ERRORS.

The Circuit Court of Appeals erred:

1. In reversing the judgment of the District Court.

2. In holding that the findings of fact of the trial court were "clearly erroneous."

3. In failing to hold that the presumption set forth in Title 26, U.S.C., Section 2553 is inapplicable and could not be relied upon by the libellant in this civil proceedings for the forfeiture of this vehicle.

4. In holding that "probable cause" for the institution of this proceedings for forfeiture was established by presumptions predicated solely upon guess, conjecture and speculation.

5. In failing to hold presumptions can not be invoked against an inanimate defendant incapable of rebutting the presumptions.

STATEMENT OF THE CASE.

The libel of information filed against the 1949 Pontiac Sedan alleged that the vehicle was seized by narcotic agents; and that the vehicle was used for the purpose of the transportation, carriage or conveyance, or for the concealment or possession, or for the facilitation of the transportation, carriage or conveyance, concealment, receipt or possession, sale or barter or exchange or giving away of a contraband article, namely, 40 tablets of morphine sulphate.

The libel further alleged that the morphine sulphate was a contraband article within the meaning of the Supplemental Forfeiture Act of 1939 (Title 49 U.S.C., Sections 781-788) on the ground that the said morphine sulphate was not purchased in the original stamped package or from the original stamped package, contrary to the provisions of Title 26 U.S.C. Section 2553, and on the ground that the said morphine sulphate had been imported or brought into the United States contrary to the provisions of Title 21 U.S.C. Section 174, and contrary to the regulations of the Treasury Department. (R. 3-5). The libel also alleged that the said vehicle was in the possession and control of Marvin Moses at the time and place of seizure. The libel prayed that the vehicle be decreed forfeited to the United States of America. (R. 5).

Thereafter the claimant, Irene Moses, filed an answer and intervening claim alleging that she was the owner of the said vehicle and denied all material allegations of the libel. (R. 5-7).

At the trial the parties entered into the following stipulation of an agreed statement of the testimony which would be elicited at the trial, each party reserving the right to introduce additional testimony not inconsistent with the stipulation. (R. 8-11):

"Pursuant to a valid and subsisting search warrant issued by the United States Commissioner for this district and division, and pursuant to a legal and valid execution of the said warrant, narcotic agents Benedict Pocoroba, Frank A. Sojat and E. P. Gross, Bureau of Narcotics, Chicago, Illinois, on May 5, 1949, searched the premises particularly described in the said warrant as 6223 Champlain Avenue, Chicago, Illinois, first floor, after the warrant had been read to one Mrs. Mary White, who admitted the aforesaid agents to the premises described above. During the search the said agents discovered a steamer trunk containing 1486 grains of heroin in capsules and bulk, 1½ ounces of heroin in a glass jar, and 2800 grains of cocaine in capsules and bulk.

"In the process of this search one Marvin Moses entered the premises described above, and after he had identified himself to the said agents as Marvin Moses, and after he admitted to the agents sole ownership of the steamer trunk and the contents thereof, he was put under arrest.

"Immediately after he was told by the agents aforesaid that he was under arrest, he was searched by them, and they found in one of the pockets of his sport coat which he was then wearing, and which he wore when he entered the premises aforesaid, 40 tablets of morphine sulphate. The morphine sulphate aforesaid is the same morphine which forms the subject matter of the chemist's report attached hereto and made a part hereof—as if set forth *in haec verba*. Said morphine sulphate is also the same morphine sulphate referred to in the libel filed in this case" (R. 8-11).

It was also stipulated that the intervening claimant owned the vehicle sought to be forfeited and was the wife of Marvin Moses. (R. 11).

A Federal Narcotic Agent (Frank Sojat) testified that before he and another agent entered the premises at 6223 Champlain Avenue, they looked on both sides of the street for a distance of at least ¾ of a block and did not see the automobile in question. (R. 12-13) The parties stipulated that if the other Narcotic Agent (Benedict Pocoroba) were called to the stand, he would testify that he was familiar with what the automobile looked like, that he knew that Marvin Moses had a Pontiac Car, and that he looked up and down the street before entering the premises that morning and did not see the car. (R. 25, 26)

When Agent Sojat asked Marvin Moses how he came to the premises at 6223 Champlain Avenue, Marvin Moses answered that he had just driven up in his car and pointed out the front window towards the automobile in controversy, which was parked outside on the street in the vicinity of the Champlain Avenue premises. (R. 22) The answer to Agent Sojat's question was elicited immediately after Moses had been searched and put under arrest by the narcotic agents but between thirty to forty five minutes after they entered the premises. (R. 13) Agent Sojat also testified that Moses had on his person keys to the Pontiac. (R. 22)

The conversation between Agent Sojat and Marvin Moses was objected to by the intervening claimant as "hearsay" and inadmissible in evidence especially where "the defendant was an inanimate object incapable of defending itself. (R. 13-21)

Further testimony on the part of Agent Sojat revealed that the forty tablets of morphine sulphate were in a pasteboard box, and did not have any stamps of any kind upon it. Objection was made to this evidence on the ground that the government was attempting to raise from this testimony the presumption of criminality against the vehicle. The government relied upon the presumption of unlawful purchase as raised by Section 2553 (a) Title 26 U.S.C. by the absence of tax paid stamps. The intervening claimant contended that this presumption can be raised only in a criminal case. (R. 24) and never against an inanimate object in a proceedings *in rem* to forfeit property.

The trial court allowed the conversation between Moses and Agent Sojat and the testimony with regard to the lack of stamps on the narcotics to be received subject to its reservation of ruling upon the questions raised by the objections. (R. 21, 24).

Agent Sojat further testified that immediately after the search of the Champlain Avenue premises, Moses was taken into custody and the automobile seized. (R. 24). It was stipulated that if Agent Pocoroba were called to the stand, his testimony would corroborate the testimony of Agent Sojat subject to the same objections made by the intervening claimant to Agent Sojat's testimony. (R. 25-26) On cross-examination Agent Sojat testified that the government did not have a search warrant for the car, and that the agents went to the premises to search them, and not to look for an automobile.

The government then rested and the intervening claimant moved the court for a finding in her favor and a dismissal of the libel. The court reserved ruling upon the motion. The claimant elected to stand upon her motion

for a finding in her favor made at the close of the government's case, and offered no evidence in her own behalf (R. 26).

The trial court found that there was no competent evidence that Marvin Moses ever rode in the Pontiac or that if he did ride in the car, he carried with him the narcotics found on his person and that there was no proof of any of the allegations in the complaint, namely that:

> "(a) The said morphine sulphate was not purchased in the original stamped package or from the original stamped package as required by law contrary to the form and manner of the statutes of the United States of America in such case provided, and contrary to regulations of the Treasury Department; and
>
> (b) The said morphine sulphate was by the said Marvin Moses fraudulently and knowingly imported or brought into the United States contrary to law or the said Marvin Moses assisted in so doing or received, concealed, bought, sold or facilitated the transportation, concealment or sale of said morphine after being imported or brought in knowing the same to have been imported contrary to the form and manner of the statutes of the United States so provided; and
>
> (c) The said morphine was transported, carried or conveyed in and upon, or by means of said Pontiac Sedan, or that the said morphine was concealed or possessed in or upon said Pontiac Sedan, or upon the person of anyone in and upon said Pontiac Sedan, or that the said Pontiac Sedan was used to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange, or giving away of said morphine contrary to the form and manner of the statutes of the United States so provided." (R. 56).

The Trial Court also found that there was no probable cause for the seizure of the automobile or the institution

of the forfeiture proceedings; that it was unlawfully seized and should not be forfeited and entered an Order requiring the Marshal to deliver the car to the claimant. (R. 56-57).

Both the majority opinion of the Circuit Court of Appeals and the dissenting Opinion of the Chief Judge held that the conversations between Moses and the government agent were clearly "hearsay" and inadmissible to prove the culpability of the automobile. The majority opinion, however, reversed the trial court solely upon the ground that the finding of the trial court that "there was no probable cause for the seizure of the automobile" was clearly erroneous as a matter law. (R. 82). The Chief Judge, in his dissenting opinion, said:

> "With the exclusion of this (inadmissible) evidence, there remains nothing against the car. But even if it be accepted, its connection with the car rests upon nothing more than guess or speculation." (R. 82).

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT.

I.

Probable cause is a question of fact for the trial court and the Circuit Court of Appeals erred in holding the decision of the trial court on this question clearly erroneous.

Section 1615 Title U.S.C. 19 provides that the question of probable cause shall *be judged by the court.* The statute specifically provides that the probable cause sufficient to shift the burden of proof to the claimant is the *probable cause existing at the time of the institution of the proceedings for forfeiture and not the probable cause that may have existed for the seizure.* There is a difference between the probable cause that might exist in the mind of an inexperienced or perhaps overzealous officer making an arrest or seizure and the cold deliberation required of a United States District Attorney after the evidence is presented to him and before he files a proceedings to deprive an innocent owner of his property. "Probable Cause" to seize an article is not the same as the probable cause sufficient to warrant the institution of a forfeiture proceedings. Probable cause to seize a vehicle has been defined as something less than sufficient evidence to forfeit the vehicle (*Agnew* v. *Haymes,* 4 Cir., 141 Fed. 631) while the probable cause sufficient to shift the burden of proof in a forfeiture proceedings is something less than a *'prima facie'* case. (*United States* v. *One Sorrel Horse,* 27 Fed. Cas. 315). It cannot rest upon suspicion or conjecture (*Brinegar* v. *United States,* 338 U.S. 160).

Conjecture, suspicion or surmise may be sufficient to relieve an officer from liability for the wrongful seizure

of a vehicle but it is not enough to warrant the institution of an action in libel. The reason is obvious. An officer at the time of a seizure must act instantaneously but ample time is afforded an official to reflect and determine if he has real, substantial and competent evidence to support a libel if one is to be filed. Under any circumstances the question of probable cause becomes a question of law only when all reasonable minds can come to only one conclusion. As long as a doubt remains the question of probable cause is one of fact for the trial court.

The trial court heard the witnesses testify, noted their demeanor on the witness stand and from all of the circumstances presented in the case at bar, found that "there was no probable cause" for the institution of the proceeding. (R. 56) The finding of the court that there was no probable cause has the weight of a verdict of a jury. (*United States* v. *One Bag of Paradise Feathers,* 2 Cir. 256 Fed. 301; *United States* v. *One Pearl Chain,* D.C. N.Y., 139 Fed. 510, affirmed 2 Cir. 139 Fed. 513). The weight and sufficiency of the testimony of the agents and the credence given to it was a question of fact for the trial court. Rule 52A of Federal Rules of Civil Procedure provides that findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. On appeal the Appellate Courts do not retry the case. The findings of fact as found by the trial court are deemed correct and will not be set aside unless based upon an erroneous view of the law. (*Coleman* v. *United States,* C.C.A. D.C. 176 F. 2d 469; *Fleming* v. *Pandzer Lumber Co.,* 7 Cir., 162 F. 2d 276). The party who attacks the trial court's findings must show that they are clearly wrong. (*Grace Bros., Inc.* v. *Comm. of Int. Rev.,* 9 Cir., 173 F. 2d. 170). Where there is no dispute about the facts

but different and reasonable inferences may be fairly drawn from the evidence, a court of appeals is forbidden to disturb findings of fact unless they are clearly erroneous. (*Tenn. Coal, Iron & R. Co.* v. *Muscoda Local No. 123,* 5 Cir., 137 F. 2d. 176). The mere fact that on the same evidence another court might reach a different result does not justify an appellate court in settling aside the findings of a trial court. (*Nee* v. *Lindwood Securities Co.,* 8 Cir., 174 F. 2d. 434)

The Circuit Court of Appeals necessarily held that solely from the facts (1) Marvin Moses had in his possession certain narcotics and keys to the car when searched; (2) that the Pontiac was not seen by the officers when they entered the premises for the purpose of making the search and (3) that it was in front of the premises shortly after Marvin Moses entered the premises raises the inferences (1) that Marvin Moses came to the premises in the Pontiac and (2) that the morphine found in his pocket was on his person when he drove the car. From these vague inferences claimant was deprived of her property.

The majority opinion cites the case of *United States* v. *Davidson,* 1 Cir., 50 F. 2d. 517, and the case of the *United States* v. *Blackwood,* 1 Cir., 47 F. 2d. 849 in support of their holding that there was probable cause for the institution of the libel in the case at bar. The facts in these cases were so dissimilar to the facts in the case at bar that they cannot be considered authority for the reversal of the judgment of the trial court.

In the *Davidson* case the "Eaglet" was sought to be forfeited under an information consisting of two counts. The first count charged *that the vessel was a pleasure vessel* and was engaged in the transportation of merchan-

dise for pay contrary to the provisions of the customs law. The second count charged that the vessel was employed in the trade of unlawfully transporting intoxicating liquors in violation of the then existing prohibition act. The evidence showed that the "Eaglet" was observed running without lights into the docks at Fall River; that immediately thereafter trucks were observed on the dock beside the slip and men were seen unloading sacks from the vessel into trucks. A coast guard vessel threw search lights on her, attempted to enter the slip where she was anchored and when twenty feet away fired one blank shot from her gun as a signal for the "Eaglet" to "stand to." Instead of "standing to" the "Eaglet" got on her way and collided with a coast guard ship. As she slipped away the men on board were seen throwing sacks overboard into the slip. She was pursued by the coast-guard vessel and ran aground. She was found the following morning by the coast guard vessel in the Kikenmuit River. At the point where she was found, two hundred and forty three sacks were taken from the bottom of the river. Two days later at a point where the crew of the "Eaglet" was seen unloading sacks, seven similar sacks were found containing whiskey. Certainly this is a far cry from the inconclusive and conjectural evidence presented in the case at bar.

The *Blackwood* case is even stronger on its facts than the *Davidson* case. A careful analysis of the *Blackwood* case shows that it was reversed because the trial court instructed the jury that the burden of proof was upon the government notwithstanding that probable cause for the seizure was established.

In the case of *Locke* v. *The United States,* 11 U.S. 339, 7 Cranch 560 cited by the majority opinion, the libel was predicated upon a charge that foreign goods were im-

ported without a permit. In the *Locke* case the names of fictitious shippers were used. The goods were not regularly entered at the custom house. They were unaccompanied by certificates of paid duty. The original markings were altered.

In this case this Court held that probable cause might be established upon a well founded suspicion and sustained the trial court's holding that there was probable cause because under the statute probable cause "was to be judged by the court". The majority opinion in the case at bar conceded that the criterion of "suspicion" is no longer the test. (*Brinegar* v. *United States,* 338 U.S. 160)

II.

Presumptions cannot be raised against an inanimate defendant.

Inferences are not evidence. They are accepted in lieu of evidence for the reason that the person against whom the inference is taken is in a position to negative the inference while the opposition cannot ordinarily prove the ultimate fact inferred. It naturally follows that the reason for the rule fails in the case at bar for the defendant is an inanimate object and cannot rebut a presumption. A rule should not extend beyond the reason for its existence.

In the case of the *United States* v. *One Nash Coupe D. C. Ill.,* 47 F. 2d. 249, Roberts was indicted and convicted in the District Court for unlawful dealing in morphine hydrochloride. Upon the charge that the drug had been unlawfully introduced into the United States without payment of custom tax imposed thereon and that it had been transported in Roberts' automobile an information of libel was filed to forfeit the automobile. The government

put in testimony which clearly established (1) that the morphine was seized from the defendant, Roberts; (2) that the drug complained of was transported several blocks in the automobile on the front seat near Roberts who operated the automobile; (3) that the morphine was not in its original package and (4) that it was not marked "duty paid." The government relied as they did in the case at bar upon the presumption created by statute which provided in effect that when the defendant is shown to have or have had possession of narcotic drugs such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains the possession to the satisfaction of the jury. (Title 19 U.S.C. Section 174). In this case former Circuit Judge Alschuler of the Seventh Circuit sitting in the District Court, refused to entertain the presumption against a motor vehicle although he held the presumption valid as against a living defendant. Similarly in the case of *United States* v. *One Studebaker Roadster,* D. C. Tenn. 40 F. 2d. 557 the court held that while inferences and presumptions are valid as against an individual they cannot be used against a motor vehicle sought to be forfeited. These cases were followed with approval in *United States* v. *One Oldsmobile Club Coupe,* D. C. Conn., 33 F. Supp. 848.

The inferences sought to be raised in the instant case are predicated upon acts occurring after the alleged act of transporting the narcotics in the automobile. An inference to be considered in lieu of evidence must be prospective, not retrospective. The narcotics that Moses had in his possession when arrested cannot be presumed to have been in his possession when and if he drove to the premises being searched. Neither does the fact that the keys to the Pontiac car found in his possession when arrested create an inference that he drove the automobile nor that

the narcotics were in his possession if and when he so drove the vehicle. The existence of a fact is not proven by evidence of a subsequent condition which is merely consistent with its existence. (*Waters-Pierce Oil Co.* v. *Van Elderen,* 8 Cir., 137 Fed. 557).

III.

The presumptions created by Title 26 U.S.C. Section 2553 are inapplicable to an inanimate defendant.

The libel in this case is predicated solely upon and specifically charges:

1. "The said morphine sulphate was not purchased in the original stamped package or from the original stamped package as required by law contrary to the form and manner of the statutes of the United States of America in such case provided, to wit, 26 U.S.C., Section 2553 and contrary to the regulations of the Treasury Department." (Tr. 3) and that

2. "The said morphine sulphate was by the said Marvin Moses fraudulently and knowingly imported or brought into the United States contrary to law or the said Marvin Moses assisted in so doing or received, concealed, bought, sold or facilitated the transportation, concealment or sale of said morphine after being imported or brought in knowing the same to have been imported contrary to form and manner of the statutes of the United States so provided, to wit, 21 U.S.C., Section 174 (Tr. 4).

The government failed to establish "reasonable and probable cause" based upon either of these allegations. The government did not make out the case alleged in its libel (*United States* v. *One Nash Coupe,* D. C. Ill. 47 F. 2d. 249); The contention of the government that morphine not contained in its original package is declared a contra-

band under the Supplemental Forfeiture Act of 1939, does not relieve it of its duty of proving the specific allegations of its libel. Proof that the morphine was not found in its original stamped package does not prove that it was fraudulently and knowingly imported into the United States contrary to law or purchased illegally as alleged. There is neither evidence nor inferences in this record to prove the allegation upon which the libel is predicated.

IV.

The question herein involved deals with fundamental property rights and is of far reaching important.

The Circuit Court of Appeals deprived this petitioner of her property by means of an inapplicable statutory presumption. The Circuit Court of Appeals has adopted a statutory presumption applicable only to a criminal proceedings and applied it to a civil proceeding *in rem*. Its decision is in conflict with the decisions in other judicial circuits, so as to call for an exercise of this Court's supervision. In this case an innocent owner of a vehicle was deprived of her property even though the trial court found there was no evidence of "probable cause for its seizure".

The Circuit Court of Appeals reversed the trial court solely on this question. Its decision is contrary to the statute which specifically makes the trial court the judge of the existence or non-existence of probable cause and invokes a presumption contrary to our basic conceptions of law and justice.

The decision of the Chief Judge of the District Court is supported by the dissenting opinion of the Chief Judge of the Circuit Court of Appeals. The majority opinion is contrary to the decision of former Seventh Circuit

Judge Alschuler in the case of *United States* v. *One Nash Coupe,* D. C. Ill. 47 F. 2d 249 and the cases of *United States* v. *One Studebaker Roadster,* D. C. Tenn. 40 F. 2d 557 and *United States* v. *One Oldsmobile Club Coupe,* D. C. Conn. 33 F. Supp. 848, which held that the libellant may not rely upon statutory provisions similar to Section 2553(a) Title 26 U.S.C. to establish probable cause for the institution of forfeiture proceedings.

CONCLUSION.

For the foregoing reasons it is respectfully submitted that a writ of certiorari shall be granted.

Respectfully submitted,

ALFRED E. ROTH,
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April 21, 1952.

APPENDIX.

Statutes Involved.

U. S. C. Title 19.

Section 1615: Burden of proof in forfeiture proceedings.

In all suits or actions brought for the forfeiture of any vessel, vehicle, merchandise, or baggage seized under the provisions of any law relating to the collection of duties on imports or tonnage, where the property is claimed by any person, the burden of proof shall lie upon such claimant; and in all suits or actions brought for the recovery of the value of any vessel, vehicle, merchandise, or baggage, because of violation of any law, the burden of proof shall be upon the defendant: Provided, That probable cause shall be first shown for the institution of such suit or action, to be judged of by the court, subject to the following rules of proof:

(1) The testimony or deposition of the officer of the customs who has boarded or required to come to a stop or seized a vessel or vehicle, or has arrested a person, shall be prima facie evidence of the place where the act in question occurred.

(2) Marks, labels, brands, or stamps, indicative of foreign origin, upon and accompanying merchandise (sic) or containers of merchandise, shall be prima facie evidence of the foreign origin of such merchandise.

(3) The fact that a vessel of any description is found, or discovered to have been, in the vicinity of any hovering vessel and under any circumstances indicating contact or communication therewith, whether by proceeding to or from such vessel, or by coming to in the vicinity of such vessel, or by delivering to or receiving from such vessel any merchandise, person or communication, or by any other means effecting contact or communication there-

with, shall be prima facie evidence that the vessel in question has visited such hovering vessel. (June 17, 1930, c. 497, Title IV,—615, 46 Stat. 757; Aug. 5, 1935, c. 438, Title II,—207, 49 Stat. 525.

U. S. C. Title 21.

Section 174. Same; penalty; evidence. If any person fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory under its control or jurisdiction, contrary to law, or assists in so doing or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of any such narcotic drug after being imported or brought in, knowing the same to have been imported contrary to law, such person shall upon conviction be fined not more than $5,000 or imprisoned for not more than ten years. Whenever on trial for a violation of this section the defendant is shown to have or to have had possession of the narcotic drug, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains the possession to the satisfaction of the jury. (June* 9, 1909, c. 100,—2, 35 Stat. 614; Jan. 17, 1914, c. 9, 38. Stat. 275 May 26, 1922, c. 202,—1, 42 Stat. 596; June 7, 1924, c. 352, 43 Stat. 657.) "June" should read "Feb.")

U. S. C. Title 26.

Section 2553. Packages

(a) General Requirement. It shall be unlawful for any person to purchase, sell, dispense, or distribute any of the drugs mentioned in section 2550(a) except in the original stamped package or from the original stamped package; and the absence of appropriate tax-paid stamps from any of the aforesaid drugs shall be prima facie evidence of a violation of this subsection by the person in whose possession same may be found; and the possession of any original stamped package containing any of the aforesaid drugs by any person who has not registered and paid special taxes as required by sections 3221 and 3220 shall be prima facie evidence of liability to such special tax.

U. S. C. Title 28.

Section 1355. Fine, penalty or forfeiture

The district courts shall have original jurisdiction, exclusive of the courts of the States, of any action or proceeding for the recovery or enforcement of any fine, penalty, or forfeiture, pecuniary or otherwise, incurred under any Act of Congress. June 25, 1948, c. 646, 62 Stat. 934.

U. S. C. Title 28.

Section 2461. Mode of Recovery

(a) Whenever a civil fine, penalty or pecuniary forfeiture is prescribed for the violation of an Act of Congress without specifying the mode of recovery or enforcement thereof, it may be recovered in a civil action.

(b) Unless otherwise provided by Act of Congress, whenever a forfeiture of property is prescribed as a penalty for violation of an Act of Congress and the seizure takes place on the high seas or on navigable waters within the admiralty and maritime jurisdiction of the United States, such forfeiture may be enforced by libel in admiralty but in cases of seizure on land the forfeiture may be enforced by a proceeding by libel which shall conform as near as may be to proceedings in admiralty. June 25, 1948, c. 646, 62 Stat. 974.

U. S. C. Title 49.

Section 781. Unlawful use of vessels, vehicles, and aircrafts; contraband article defined.

(a) It shall be unlawful (1) to transport, carry, or convey any contraband article in, upon, or by means of any vessel, vehicle, or aircraft; (2) to conceal or possess any contraband article in or upon vessel, vehicle or aircraft; or (3) to use any vessel, vehicle, or aircraft to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange, or giving away of any contraband article.

(b) As used in this section, the term "contraband article" means—

(1) Any narcotic drug which has been or is possessed with intent to sell or offer for sale in violation of any laws or regulations of the United States dealing therewith; or which has been acquired or is possessed, sold, transferred, or offered for sale, in violation of any laws of the United States dealing therewith; or which has been acquired by theft, robbery, or burglary and carried or transported within any Territory, possession, or the District of Columbia, or from any State, Territory, possession, the District of Columbia, or the Canal Zone, to another State, Territory, possession, the District of Columbia, or the Canal Zone; or which does not bear appropriate tax-paid internal-revenue stamps as required by law or regulations * * *.

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